STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS PUBLIC UTILITIES COMMISSION

IN RE: THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL GRID REQUEST

FOR APPROVAL OF A GAS CAPACITY CONTRACT

AND COST RECOVERY PURSUANT TO

R.I. GEN. LAWS § 39-31-1 TO 9

DOCKET NO. 4627

ALGONQUIN GAS TRANSMISSION, LLC'S OBJECTION TO CONSERVATION LAW FOUNDATION'S MOTION TO REOPEN THE DOCKET AND TO RECONSIDER ITS MOTION TO DISMISS

Algonquin Gas Transmission, LLC ("Algonquin") hereby objects to the Conservation Law Foundation's ("CLF") Motion to Reopen the Docket and to Reconsider its Motion to Dismiss the Narragansett Electric Company d/b/a National Grid's Request for Approval of a Gas Capacity Contract and Cost Recovery and Close the Docket (the "Motion to Reconsider"). CLF's rehashed arguments have been previously considered, and they are the very arguments that resulted in the present stay of this docket. Although there have been additional developments in multiple jurisdictions concerning the Access Northeast project (the "ANE Project") since this proceeding was stayed on September 29, 2016, those developments similarly have not disposed of the factual issues that precluded summary disposition of this proceeding in September, and decisions in some jurisdictions actually reinforce the soundness of the September 29, 2016 decision to stay this proceeding. CLF filed the Motion to Reconsider in a transparent attempt to prevent the ANE Project proponents from pursuing solutions to enable construction of critically needed natural gas pipeline infrastructure in New England. CLF misconstrues the impact of developments in Connecticut and Maine on the prospects for the ANE Project and ignores the fact that the October 6, 2016 decision of the New Hampshire Public Utilities Commission is subject to judicial review. CLF's Motion to Reconsider paints an incomplete and inaccurate picture, and, as explained more fully below, the Motion to Reconsider should be denied.

I. BACKGROUND

A. The Rhode Island Proceeding

This proceeding was commenced on June 30, 2016 by National Grid's filing of a Request for Approval of Gas Capacity Contract and Cost Recovery (the "National Grid Petition") pursuant to Rhode Island's Affordable Clean Energy Security Act (R.I. Gen. Laws §§ 39-31-1, et seq.)(the "ACES Act"). The National Grid Petition seeks approval of a precedent agreement between National Grid and Algonquin for firm gas transportation and storage services relative to the proposed ANE Project. In accordance with the ACES Act, the National Grid Petition was docketed and the review contemplated by § 6 of the ACES Act began.

On August 22, 2016 CLF filed a motion to dismiss the National Grid Petition and close the docket (the "Motion to Dismiss"). In the Motion to Dismiss, CLF argued that a decision of Massachusetts' Supreme Judicial Court in Engie Gas & LNG, LLC v. Department of Public Utilities, 56 N.E.3d 740 (Mass. 2016) would preclude the Rhode Island's Public Utilities Commission (the "RIPUC") from granting the National Grid Petition as a matter of law. National Grid and Algonquin each objected to the Motion to Dismiss. Algonquin noted that CLF's motion was entirely unsupported by evidence establishing the absence of material factual disputes. ²

At an open meeting on September 29, 2016, the RIPUC agreed that unresolved factual issues precluded summary disposition and denied CLF's Motion to Dismiss without prejudice. Further, the RIPUC stayed this proceeding in order to allow the ANE Project proponents to seek

¹ Motion to Dismiss, p. 5.

² Algonquin argued that CLF failed to demonstrate that: 1) net benefits would not accrue to Rhode Island ratepayers through the ANE Project; and 2) that the ANE Project was not consistent with the purposes of the ACES Act.

a solution to the issues arising as a result of the <u>Engie</u> decision.³ Among the potential solutions discussed were cost recovery from Massachusetts LDC customers or legislation to resolve the legal impediments to EDC-customer cost recovery. National Grid was directed to file a status report on January 13, 2017.

B. The Maine Decision

In its Motion to Reconsider, CLF states that the ANE Project has been "effectively" rejected in Maine.⁴ This is patently wrong. On September 14, 2016, Maine's Public Utilities Commission ("ME PUC") decided "to move forward with negotiation of a precedent agreement with [the ANE Project] for Maine's 9% load share conditioned upon comparable precedent agreements with [the ANE Project] and other New England states." This Order includes findings that the ANE Project offered a regional solution to market failures that prevent the development of regional gas infrastructure, and that the project would offer net benefits to Maine's ratepayers that were greater than competing proposals assuming regional participation.⁶

On October 4, 2016, several opponents of the ANE Project, including CLF, sought reconsideration and/or clarification of the ME Phase 2 Order. The Portland Natural Gas Transmission System argued, among other things, that the <u>Engie</u> decision, which issued after the ME PUC deliberated its Phase 2 decision but before the ME PUC issued the ME Phase 2 Order, would prevent satisfaction of the regional participation condition contained in the ME Phase 2

³ Algonquin also argued that the potential remained for the ANE Project to satisfy of the purposes of the ACES Act, i.e. "to advance strategic investment in energy infrastructure" with appropriate cost apportionment between participating states. See R.I. Gen. Laws §§ 39-31-1 and 39-31-6(a)(1)(v). National Grid noted at the September 21, 2016 hearing on the Motion to Dismiss that appropriate cost sharing in Massachusetts could be made possible and therefore the ANE Project remained viable notwithstanding the Engie decision.

⁴ Motion to Reconsider, p. 2.

⁵ ME PUC Order of September 14, 2016, Docket No. 2014-00071 (the" ME Phase 2 Order")(Exhibit 1), p. 41.

⁶ ME Phase 2 Order, pp. 34 and 40.

Order.⁷ Repsol Energy North America Corporation similarly argued that <u>Engie</u>, the stay of the Rhode Island proceeding and the dismissal of the New Hampshire proceeding (as described below) would prevent satisfaction of the ME Phase 2 Order's regional participation requirement.⁸

The ME PUC unanimously rejected all of these arguments in the ME Clarification Order, a decision that was publicly deliberated on November 8, 2016. Directly contrary to CLF's characterization, the ME PUC decided that "Recent events in Massachusetts, New Hampshire and Rhode Island may cast doubt on a path forward for the region, but do not represent termination of the ANE project or regional efforts to enhance pipeline infrastructure in New England." The ME PUC reiterated its prior findings that the ANE Project is "commercially reasonable, in the public interest and reasonably likely to increase pipeline capacity into the region, be cost beneficial, and enhance system reliability," and stated "the Commission emphasizes that recent events in the region have not altered the Commission's primary conclusion in [the ME Phase 2 Order] regarding the statutory prerequisites and the economic analysis showing that both ANE and [an alternative proposal] are cost beneficial to ratepayers."

In light of those findings, and despite the regulatory uncertainties present in other New England jurisdictions, which the ME PUC took into account, the ME PUC opted to stay its

⁷ ME PUC Order on Petitions for Clarification of November 21, 2016, Docket No. 2014-00071, p. 2 (the "ME Clarification Order")(Exhibit 2).

⁸ <u>Id.</u>, p. 3.

⁹ CLF's Motion for Reconsideration in these proceedings notably omits any mention of the ME Clarification Order.

¹⁰ Id., p. 5.

¹¹ <u>Id.</u>, pp. 5-6.

proceeding and requested semi-annual status reports concerning the ANE Project's progress beginning on June 1, 2017. 12

C. The Connecticut Solicitation

Pursuant to Public Act 15-107, the Connecticut Department of Energy and Environmental Protection ("CT DEEP") is authorized to issue solicitations for long-term contracts from providers of small-scale renewables (2-20 MW), large-scale renewables (over 20 MW), and natural gas resources. CT DEEP issued a solicitation for natural gas resources on June 2, 2016. Algonquin and six other parties submitted bids on or about June 29, 2016.

On October 25, 2016, CT DEEP issued a notice cancelling the solicitation for natural gas resources while expressing support for the concept of a regional expansion of natural gas pipeline infrastructure. CT DEEP stated that it "believes that this problem of inadequate gas infrastructure is greater than one state can solve alone" and that "[r]egional investment is necessary to ensure that no one state disproportionately bears the costs of addressing what is a problem endemic to our regional electric system." DEEP stressed that it may reissue the solicitation for natural gas resources at some future time:

The Department retains its statutory authority to issue future RFPs under Section 1(d) of the Act, either on its own or again in coordination with other states in the region, to procure natural gas resources for the purpose of providing more reliable electric service for the benefit of the Connecticut's electric ratepayers and to meet the State's energy and environmental goals and policies. DEEP will monitor conditions in the ISO New England market and relevant proceedings of other New England states to determine if conditions warrant

¹² Id.

¹³ CT DEEP issued a solicitation for large-scale renewables in conjunction with Eversource, National Grid and Unitil on November 12, 2015 and bids were due by January 28, 2016. CT DEEP issued a solicitation for small-scale renewables on March 9, 2016 and bids were due by May 4, 2016.

¹⁴ CT DEEP Cancellation Notice (Exhibit 3), at 2.

reissuance. The process for reissuance of an RFP under Section 1(d) is straightforward, and could be initiated at any time. 15

D. The New Hampshire Decision

On February 18, 2016, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") filed a petition with the NH PUC for approval of, among other things, a proposed 20-year contract between Eversource and Algonquin for natural gas capacity on Algonquin's Access Northeast Project. NH PUC opened Docket No. 16-241 to consider Eversource's petition. On October 6, 2016, NH PUC issued an Order on the threshold question of whether the Access Northeast Project is consistent with New Hampshire law. NH PUC acknowledged that "Eversource's proposal is an interesting one, with the potential to reduce [electric price] volatility" but nonetheless concluded that it was not allowed under the state's Electric Utility Restructuring Act (RSA 374-F).

Algonquin disagrees with NH PUC's interpretation of the Restructuring Act and intends to seek judicial review of its decision through an appeal to the New Hampshire Supreme Court.

¹⁵ CT DEEP Cancellation Notice, at 2 (emphasis added).

¹⁶ On March 24, 2016, the NH PUC issued an Order of Notice in Docket No. 16-241 setting forth a two-phase proceeding. In the first phase ("Phase I"), the Commission considered whether the Access Northeast Program is allowed under New Hampshire law. In the event of an affirmative decision on this issue after judicial review by the New Hampshire Supreme Court, the Commission would then open a second phase ("Phase II") "to examine the appropriate economic, engineering, environmental, cost recovery, and other factors presented by Eversource's proposal."

¹⁷ New Hampshire Public Utilities Commission Order No. 25,950, Docket No. 16-241 (Oct. 6, 2016), p. 15 (the "NH PUC Order")(Exhibit 4).

II. ARGUMENT

A. The Stay of this Docket Should Remain in Place as No New Arguments Change the Rationale Underlying RIPUC's Original Decision and Actions in Other Jurisdictions In Fact Reinforce the RIPUC's Original Course

The RIPUC's decision to stay this proceeding, and require a January 2017 status report concerning the ANE Project's progress in other jurisdictions, is a reasonable approach that serves the ACES Act's stated purpose to "[u]tilize coordinated competitive processes, in collaboration with other New England states and their instrumentalities, to advance strategic investment in energy infrastructure." Since CLF's Motion to Dismiss was denied in September, nothing has occurred that should alter the RIPUC's reasoned decision. In fact, Maine and Connecticut have effectively followed the same course. Since the majority of jurisdictions in which the ANE Project is under consideration have adopted a wait-and-see approach to hurdles in Massachusetts and New Hampshire, dismissal of this proceeding would run directly counter to the ACES Act's goal of regional coordination.

CLF argues that the ANE Project "has no regional path forward" and "is dead" as if repetition alone would make CLF's arguments true. ¹⁹ However, these arguments have been made and rejected in Maine and should likewise be rejected here. In the ME Phase 2 Order the ME PUC implicitly rejected CLF's argument that "for market, regulatory, legal and political reasons, ANE is unlikely to get built" and proceeded to find, despite regulatory uncertainties, that the ANE Project was a commercially reasonable regional solution to gas pipeline infrastructure needs and offered cost and reliability benefits to ratepayers. ²⁰ Later, in considering motions for

¹⁸ R.I. Gen. Laws § 39-31-1(2).

¹⁹ Motion to Reconsider, p. 10.

²⁰ ME Phase 2 Order, p. 12; ME Clarification Order, p. 5..

reconsideration and/or clarification of the ME Phase 2 Order and in light of <u>Engie</u> and regulatory developments in New Hampshire and Connecticut, the ME PUC decided that its approval of the ANE Project did not need to be reconsidered.²¹ Specifically, the ME PUC concluded that "[r]ecent events in Massachusetts, New Hampshire and Rhode Island may cast doubt on a path forward for the region, but do not represent termination of the ANE project or regional efforts to enhance pipeline infrastructure in New England."²² Notwithstanding developments in other New England jurisdictions, the ME PUC stayed its proceeding to allow the ANE Project's proponents to address those developments.

With respect to Connecticut, CLF mischaracterizes the CT DEEP Cancellation Notice as a "[r]ejection of the ANE Project." Among other things, the CT DEEP Cancellation Notice stated that:

- 1) "under Connecticut law the costs of [gas infrastructure]...may be recovered from the State's electric ratepayers, for whose benefit these resources are procured;"
- 2) "the problem of inadequate gas infrastructure is greater than one state can solve alone;"
- 3) "DEEP will monitor...relevant proceedings of other New England states to determine if conditions warrant reissuance;"
- 4) "The process for reissuance of an RFP under Section 1(d) [i.e., for gas infrastructure] is straightforward, and could be initiated at any time;" and
- 5) "we remain committed to utilizing our authority under all sections of the Act, in coordination with other states, to secure more reliable and affordable electric service."²⁴

²¹ ME Clarification Order, p. 6; Conservation Law Foundation's request for official notice dated October 26, 2016 in Docket No. 2014-00071 (Exhibit 5); and Response of Algonquin and Maritimes to CLF Request for Official Notice dated October 28, 2016 in Docket No. 2014-00071 (Exhibit 6).

²² ME Clarification Order, p. 5.

²³ Motion to Reconsider, p. 7.

²⁴ CT DEEP Cancellation Notice, p. 2.

The CT DEEP Cancellation Notice is not a rejection of the ANE Project; it is a commitment by the CT DEEP to issue a future solicitation for regionally procured gas infrastructure once circumstances in other New England jurisdictions allow for appropriate cost sharing. When interviewed concerning the CT DEEP Cancellation Notice, the CT DEEP's then Deputy Commissioner for Energy, Katie Dykes, cautioned that the cancellation of Connecticut's pipeline infrastructure RFP "doesn't suggest, shouldn't be interpreted that we don't believe further solutions or efforts are needed," and "this issue of inadequate gas pipeline capacity is one that we're going to continue to have to monitor and work on." Ms. Dykes continued to explain that while Connecticut pursues renewable generation through parallel solicitations, "when the wind isn't blowing, when the sun isn't shining, the grid operators are relying on things like natural gas generation...[s]o we have to keep our eye on this issue of gas capacity because we owe it to our ratepayers to insure that we have a grid that can function all year round, not just when we have a mild winter." 27

The CT DEEP has adopted a wait-and-see posture equivalent to Maine and Rhode Island, but the mechanism for implementing that approach is necessarily different in Connecticut. As required by the Connecticut solicitation, Algonquin and the other bidders certified that they would hold their bids open for 270 days, i.e., until March 26, 2017. Since the bids submitted in June 2016 were set to expire in March of 2017, CT DEEP did not have the flexibility to defer decision as has happened in other states. Importantly, however, CT DEEP does retain flexibility to reissue a solicitation <u>at any time</u>. Given that the bids submitted to the CT DEEP were set to

²⁵ CT DEEP Cancellation Notice, p. 2.

²⁶ WNPR NEXT with John Dankosky: Can New England Move Forward with Renewables without Leaning on Natural Gas? (WNPR radio broadcast Nov. 3, 2016) (available at: https://soundcloud.com/wnpr/can-new-england-move-forward-with-renewables-without-relying-on-natural-gas).

²⁷ <u>Id.</u>

expire in March 2017, and the process for solicitation is straightforward, the CT DEEP Cancellation Notice represents the simplest means available to give project proponents time to address setbacks in Massachusetts and New Hampshire.

Similarly, when the RIPUC decided to stay this proceeding in September, it did so to allow time for the development of solutions to the <u>Engie</u> decision. Algonquin remains committed to pursuing these solutions and the potential for success was the very reason that the RIPUC opted to stay, rather than dismiss, this proceeding when it denied CLF's Motion to Dismiss. CLF now claims such solutions are "purely speculative," but they are no more speculative today than they were in September when the RIPUC decided that pursuit of these solutions justified a stay of these proceedings and precluded summary disposition.

The NH PUC Order represents a new setback not known when CLF's prior Motion to Dismiss was denied, but the order presents no greater hurdle than the <u>Engie</u> decision. To the contrary, the NH PUC Order is subject to judicial review by New Hampshire's Supreme Court. Even assuming an adverse result before the New Hampshire Supreme Court, Algonquin and Eversource could pursue alternative cost recovery or legislative solutions in New Hampshire as in Massachusetts.

Both Maine and Connecticut have followed Rhode Island's lead in pausing review of the ANE Project while solutions are pursued in other New England jurisdictions. This manner of coordination is precisely what is contemplated by the ACES Act. The CLF inaccurately portrays recent developments in Maine and Connecticut as a rejection of the ANE Project, but this mischaracterization is nothing more than a cynical tactic to create an illusion of project failure in each New England jurisdiction in the hopes that the illusion will lead to rejection of the project. Such arguments were flatly rejected in the ME PUC Clarification Order, which was

²⁸ Motion to Reconsider, p. 10 n.10.

conspicuously not mentioned in CLF's Motion to Reconsider in this proceeding. Despite developments in Massachusetts and New Hampshire, the stay of this proceeding should remain in place while the project proponents act to address issues in other jurisdictions.

B. The ANE Project Should be Evaluated on its Merits to Determine whether it Meets the Substantive Requirements of the ACES Act

CLF argues that the ANE Project is incapable of satisfying the requirements for approval under the ACES Act.²⁹ Its argument is based entirely upon the fact that the project has not yet achieved universal approval throughout the region.³⁰ As with other arguments CLF presents, this has been presented to the ME PUC and rejected and it should be similarly rejected here.

In the ME Phase 2 Order, the ME PUC explains that CLF opposed Phase 2 approval of the ANE Project not because of the project's merits, but because other jurisdictions had yet to act and because "ANE is unlikely to get built." The ME PUC aptly disposed of these arguments stating, "The progress in other states can either be bolstered by Maine's action or hindered by Maine's inaction." After proceeding to consider the ANE Project on its merits, the ME PUC concluded that the ANE Project is a commercially reasonable and regional solution to inadequate gas infrastructure and offers net benefits to ratepayers. These findings mirror the findings necessary to justify approval of the ANE Project under the ACES Act. The project of the ANE Project under the ACES Act.

²⁹ Motion to Reconsider, p. 8.

³⁰ <u>Id.</u>

³¹ ME Phase 2 Order, p. 12.

³² ME Phase 2 Order, p. 40.

³³ ME Phase 2 Order, pp. 34 and 40.

³⁴ R.I. Gen. Laws § 39-31-6(a)(1)(v).

The CLF hopes to prevent the RIPUC from making similar findings by preventing a

review of the ANE Project on its merits in Rhode Island. CLF essentially argues that regional

regulatory bodies (including the RIPUC) should not review the ANE Project because other

jurisdictions have yet to approve it. If this argument were accepted then none of the New

England jurisdictions would complete reviews the ANE Project and the ACES Act goal of

fostering collaborative and coordinated processes would be rendered impossible.

The uncertainties resulting from Engie and the NH PUC Order have not foreclosed the

possibility that the ANE Project will proceed and therefore issues of fact preclude the summary

disposition sought by CLF. The ANE Project proponents are actively working to resolve these

factual issues. The pursuit of potential solutions is the very reason that this proceeding was

stayed in September and the reason why summary disposition remains inappropriate today.

III. CONCLUSION

For the foregoing reasons, Algonquin requests that the Commission deny CLF's Motion

to Reconsider.

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Dated: December 8, 2016

Respectfully submitted, ALGONQUIN GAS TRANSMISSION, LLC

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CERTIFICATION

I hereby certify that on the 8th day of December 2016, I sent a copy of the within to all parties set forth on the attached Service List by electronic mail and copies to Luly Massaro, Commission Clerk, by electronic mail and regular mail.

Steven J. Boyajian

Docket No. 4627 – National Grid - Gas Capacity Contract and Cost Recovery Service List updated 9/16/16

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